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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,019	10/31/2003	Peter Schlegel	487.1086	2142
23280 7590 03/17/2008 Davidson, Davidson & Kappel, LLC 485 7th Avenue 14th Floor New York, NY 10018				
EXAMINER				
MILLER, WILLIAM L				
ART UNIT		PAPER NUMBER		
3677				
MAIL DATE		DELIVERY MODE		
03/17/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/699,019

Applicant(s)

SCHLEGEL, PETER

Examiner

William L. Miller

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-26 is/are allowed.
- 6) ☒ Claim(s) 1-25 and 27-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendment filed 12-10-2007 has been entered.
2. Claims 1-33 are pending.

Claim Rejections - 35 USC § 112

3. Claims 1-19 and 27-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 1, line 10, recites a "second opening phase of the flap", however the claim fails to previously recite and/or define a first opening phase of the flap thus rendering the claim indefinite.
5. In claim 14, line 2, "the hinge" lacks antecedent basis.
6. In claim 27, lines 3-4, the phrase "into an opening direction while the flap while the flap is" is unclear.
7. Claim 27, line 7, recites a "second opening movement phase of the flap", however the claim fails to previously recite and/or define a first opening movement phase of the flap thus rendering the claim indefinite.
8. It is unclear if the "second opening movement phase of the flap" recited in claim 28, line 2, is referencing the "second opening movement phase of the flap" previously recited in claim 27, line 7.

9. Claim 31, lines 10-11, recites a "second opening phase of the flap", however the claim fails to previously recite and/or define a first opening phase of the flap thus rendering the claim indefinite.
10. It is unclear if the "opening direction" recited in claim 32, lines 2-3, is referencing the "opening direction" previously recited in claim 31, line 8.

Allowable Subject Matter

11. Claims 1, 27, and 31 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
12. Claims 2-19, 28-30, and 32-33 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
13. Claims 20-26 are allowed.
14. It is noted in claims 1, 20, and 27, the vehicle flap is being positively claimed, and subsequently the vehicle body coupled thereto is also being positively claimed.

Response to Arguments

15. All previous objection and rejections of the claims have been overcome or withdrawn.
16. The applicant argues the flap and the vehicle coupled thereto are not positively recited in claims 1, 20, and 27. This is incorrect as the following phrases are examples of the positive recitation of the flap (and thus vehicle body): claim 1, line 10, "a tensioning device *tensioning* the first spring *in a second opening phase of the flap*"; and claims 20 and 27, line 2, "a first link and a second link *coupling a flap to a vehicle body*".

Conclusion

17. Newly presented 112-2 rejections not necessitated by amendment render the instant Office action non-final.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William L. Miller whose telephone number is (571) 272-7068. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached on (571) 272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William L. Miller/
Primary Examiner, Art Unit 3677